IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 765 OF 2007

Ravindra Kumar Dosaj, aged 43 years,)
C/o. Milind Jaiwanta Hiwale,)
residing at Type 4/23/2136, RCF Colony,)
Chembur, Mumbai-400 074)...Petitioner

Versus

Rashtriya Chemicals & Fertilizers Limited)
(A Government of India Undertaking, having)
its office at Priyadarshini Building, Eastern)
Express Highway, Sion, Mumbai-400 022)...Respondent

WITH

WRIT PETITION NO. 766 OF 2007

Milind Jaiwanta Hiwale, aged 46 years,)
residing at Type 4/23/2136, RCF Colony,)
Chembur, Mumbai-400 074)...Petitioner

Versus

Rashtriya Chemicals & Fertilizers Limited)
(A Government of India Undertaking, having)
its office at Priyadarshini Building, Eastern)
Express Highway, Sion, Mumbai-400 022)...Respondent

WITH

WRIT PETITION (LODGING) NO. 691 OF 2007

Shirish Gopal Kane, aged 47 years,)
C/o. Advocate R.K. Mendadkar,)

8/B, Kamgar Nagar, Kurla (E), Mumbai-400 024)...Petitioner

Versus

Rashtriya Chemicals & Fertilizers Limited)
(A Government of India Undertaking, having)
its office at Priyadarshini Building, Eastern)
Express Highway, Sion, Mumbai-400 022)...Respondent

In all matters:

Mr. R.K. Mendadkar with Mrs. Helen N. Koli-Mandlik for the petitioners.
Mrs. Swati Deshpande, instructed by M/s. Bodhanwalla & Co., for respondent.

CORAM: **SWATANTER KUMAR, C.J.** &

S.C. DHARMADHIKARI, J.

Judgment reserved on : April 11, 2007
Judgment delivered on: April 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

By this common judgment, we will dispose of the above noticed three writ petitions, as they base identical question of law on somewhat similar facts. It is not necessary for us to deal with the facts of each case in greater detail. Suffice it to refer to the facts of civil Writ Petition No. 765 of 2007. However, wherever necessary, we would refer to the facts of other cases as well.

2. Ravindra Kumar Dosaj, petitioner in civil Writ Petition No. 765 of 2007, joined the services of the respondent company as a Management Trainee on 15th January, 1986. Thereafter, he was appointed to the post of Junior Engineer (Mechanical) by the respondent company by an order of appointment dated 4th June, 1987. His terms of appointment stipulated that after completion of the bond period, the services of the petitioner were liable to be terminated by three months notice from either side or pay in lieu thereof. Thereafter the petitioner was promoted to various posts and finally to the post of Additional Chief Engineer (Mechanical). That on account of better prospectus and also on personal grounds, the petitioner claims to have applied for an oversees job in a company in U.A.E. and, in fact, selected. The job for which he was selected was more challenging and was resulting an overall development of the petitioner. Besides all this, he was getting better salary and perks from that company. Persuaded by these considerations, the petitioner vide his letter dated 3rd March, 2007, tendered his resignation and requested the respondent to relieve him from the services with effect from 24th March, 2007. The said letter was duly forwarded to the competent authority in Mumbai with

favourable remarks by the Executive Director as well as the General Manager of the respondent Company at its Thal Unit. The resignation was accepted by the Department of Personnel, with effect from 3rd June, 2007, and not with effect from 24th March, 2007, as requested by the petitioner. The petitioner called upon the respondent company and made requests that he had to join the foreign employer and, therefore, needed to be relieved at the earliest and even he offered salary of short fall in the notice period. This was not accepted by the respondent company and aggrieved by this action of the respondent, the petitioner filed the present writ petition under Article 226 of the Constitution of India.

3. It is not in dispute that the respondent company has its own Rules and the Rules which are applicable are RCF Employees' (Conduct, Discipline & Appeal) Rules, 2005 (hereinafter “the Rules”). According to the petitioner, Rule 8 which deals with the resignation gives an absolute right to the petitioner to resign in terms of the said Rule and the respondent authorities are obliged to accept such resignation. An exception is provided that resignation shall take effect only after it has been accepted by the management/competent authority

and after fulfilling the obligations imposed by the conditions of appointment. The petitioner having complied with the requirements, his resignation should have been accepted and could not be declined by the respondent. The petitioner also places reliance upon the order of this Court in the case of *Mahesh Ajabrao Khade* vs. *Rashtriya Chemicals & Fertilizers Limited* (Writ Petition (Lodging) No. 640 of 2007), decided on 22nd March, 2007, a copy of which has been annexed to the petition as Exhibit-E. The petitioner also submits that he had worked for 22 years and served to the satisfaction of all concerned and there was no justification on the part of the respondent in declining to accede to the request of the petitioner to relieve him in March, 2007 itself. The action of the respondent thus is stated to be arbitrary, contrary to the terms of appointment and resultantly liable to be quashed.

4. At the very outset, we may refer to the terms of appointment of the petitioner as contained in the letter of appointment dated 4th June, 1987. The relevant clauses read as under:-

> "2. During the first 2 years period of your service with us, you are covered by the Bond executed by you and the terms and conditions stipulated in the Bond will remain binding on

you.

3. After completion of Bond period your services will be liable to be terminated on 3 months' notice on either side or pay in lieu thereof.

4. During such time as you are in our employment, you shall be subject to such rules and regulations as the Management may frame from time to time.

5. During your services with us you shall devote exclusively to the duty assigned to you from time to time and you shall personally attend thereto at all time during the usual working hours and whenever necessary as the exigencies of work require and the law in force permits.

6. Accommodation is not guaranteed and will be governed by the availability and other normal rules in force in the Company."

5. Taking advantage of the above terms and conditions, the petitioner had tendered his resignation on 3rd March, 2007. The letter of resignation submitted by the petitioner to the respondent reads as under:

" I, the undersigned am working in Ammonia (Mech.) as Additional Chief Engineer. I am re signing from RCF Ltd. Today on 3/03/2007 due to my personal reasons. Kindly release me from RCF on 23/3/07.

I take this opportunity to thank all my colleagues, fellow workers and my senior with whom I worked and enjoyed all through these years. I also thank the Management for the kind co-operation and guidance I got

from time to time."

This was replied to by the authorities on 27th March, 2007, which reads as under:-

> " Sub: Your resignation dated 03.03.2007
>
> This has reference to your resignation of dtd. 03.03.2007, vide which you have requested for releasing you from the services of company w.e.f. 24.03.2007.
>
> In this regard, we would like to inform you that your resignation has been accepted by the competent authority subject to the condition that you will have to render your services to the company during the required notice period i.e. of 3 months. Hence, you shall be released from services of company w.e.f. 03.06.2007, only after submission of "No Dues Certificate" from concerned authorities. Two copies of No Dues Certificate are enclosed.
>
> Further, it may be noted that during the above said period i.e. Upto 03.06.2007, any instances of unauthorised absenteeism etc. shall be dealt under the ambit of the rules applicable to you.
>
> Sd/- P.D. Shinde,
> Personnel Manager"

In the light of the above request for resignation and its acceptance, the submissions made on behalf of either sides are relatable to Rule 8 of the Rules which reads as under:-

"**8. Resignation**

(a) Any employee who desires to leave the service of the Company shall submit a letter of resignation to the Appointing Authority through proper channel. A copy of the resignation shall also be handed over to the Personnel Department simultaneously and acknowledgement obtained. A resignation shall take effect only after it has been accepted by the Management/Competent Authority and after fulfilling the obligations imposed by the conditions of appointment or contract. Should an employee leave the service without fulfiling the obligations, he will be liable to be sued by the Management for damages. Resignation shall be governed as follows:

(i) A permanent employee may leave the services of the Company after giving 3 months notice or as per the terms and conditions of his appointment.

(ii) A Probationer/Contract Employee may leave the service as per terms and conditions of his appointment or contract as the case may be.

(iii) The Company reserves the right either to accept pay and allowance / adjustment of leave towards notice period or demand for actual service during the notice period.

(iv) The Company reserves the right not to accept the resignation if any disciplinary proceedings/ criminal proceedings are pending, initiated or contemplated against an employee."

6. Every employee of the company is governed by the Rules.

While it is binding on the employee, it equally controls the employer as well and an employee may superannuate, or prematurely retire on the grounds contained in Rule 10 or may resign from service in terms of Rule 8. Rule 8 does give a right to an employee to resign from his employment but this right to resign is coupled with an obligation and restriction contained in the same Rule. The expression "*A resignation shall take effect only after it has been accepted by the Management/Competent Authority and after fulfilling the obligations imposed by the conditions of appointment or contract. Should an employee leave the service without fulfilling the obligations, he will be liable to be sued by the Management for damages*" clearly indicates that it is not a defeasible or absolute right. An employee should discharge his obligation in consonance with the rules, of which he is taking advantage. The benefit under the Rule is coupled with an obligation and the benefit cannot accrue without discharging the obligation. There is no challenge in the writ petitions with regard to the validity or correctness of the rule. Once the rule exists, it has to be enforced upon its plain language.

7. The order of this Court in the case of *Mahesh Ajabrao Khade*

(supra) firstly is an interim order and would hardly be of any consequence when the matter is disposed of finally and on merits. Even in the interim order, the Division Bench has clearly stated that the petitioner should comply with the conditions contained in Rule 8 and, in fact, directed the petitioner to deposit two months' salary as notice pay and then granted an interim order in terms of prayer clause (b). The order primarily would be based on the legal principle that a contract of service cannot be specifically enforced. This is co-relatable to the general principles for grant or refusal of an injunction. Injunction is an equitable relief and not an indefeasible legal right. The Court would and should normally balance the equities between the parties before it can issue an absolute injunction, either prohibitory or mandatory. The essence of the Rules thus provide a right to the applicant to submit his resignation and ask for release from the services. But this right cannot be construed in abstract and *de hors* the concept of employment. The relationship of employer-employee is founded on principle of mutuality and subject to the limitation of law. Rule 8 of the Rules requires an employee to submit a letter of resignation to the appointing authority and it would take effect after it has been accepted by the management and the conditions contemplated in that Rule are satisfied. Of course, it

does not also mean that the management would have a right to extend the notice period indefinitely or harass the employee by wrongfully detaining him or compelling him to continue in service, thus causing prejudice to the right of the employee for his future employment but a reasonable expectation of the employer to require the employee to serve till the notice period may not be unreasonable. It is, of course, difficult to specify any straight jacket formula which would squarely apply to all kinds of cases. Each case would have to be examined on its own facts.

8. In the present case, the petitioner, Ravindra Kumar Dosaj, had submitted his resignation on 3rd March, 2007, which would take effect from 24th March, 2007. Along with the notice, he had not tendered three months' notice pay nor had called upon the management to reduce the period of notice or requested for any kind of exemption. Despite such lacunae, the petitioner was permitted to be released from the services of the Company with effect from 3rd June, 2007, vide letter dated 27th March, 2007. As such, we are unable to see any arbitrariness or unreasonableness in the action of the respondent. The petitioner obviously would stand relieved with effect from 3rd June, 2007,

and can even go earlier provided he tenders three months' salary in lieu of the notice period.

9. If the petitioner is so concerned about his employment abroad, then there should be no hesitation on the part of the petitioner to tender notice pay as he is going to get much higher salary from his prospective place of employment and should also vacate the quarters. It is also true that petitioner has also not vacated the service quarters given to him in terms of the conditions of employment and it will be more than unfair if the petitioner is permitted to enjoy all the benefits of the service and suddenly leave the employment without adherence to the terms of contract of his employment. Another reason for us to take this view is the growing attitude of the employees taking up employment in companies abroad; which most of the time does not leave the employer with sufficient time to make alternative arrangements. The Court essentially would be under an obligation to balance the equities between the parties and at least give liberty to the employer to make alternative arrangements within the notice period and/or receive three months salary in lieu of the notice. In some cases, it could be a bona fide stand of the employer that they may not be able to leave the

employee instantly like in the present case. It is contended that the maintenance work of the Company is going on and some of the petitioners are Engineers and Engineers-in-charge of Project maintenance, thus their services cannot be dispensed forthwith.

10. In the case of Shirish Gopal Kane, petitioner in Writ Petition (Lodging) No. 691 of 2007, he tendered his resignation on 2nd March, 2007, and wanted to be relieved with effect from 12th March, 2007. According to him, he was to leave Mumbai by 28th March, 2007, but he also did not tender three months salary in lieu of the notice period. Vide letter dated 20th March, 2007, the management had informed the employee that three months notice was mandatory in case of resignation and he could not be relieved from the services of the respondent unless and until acceptance of his resignation was expressly intimated to the petitioner. In these circumstances we also find no merit in this petition which would entitle the petitioner for grant of any relief.

11. In the case of Milind J. Hiwale, petitioner in Writ Petition No. 766 of 2007, he submitted his resignation on 13th February, 2007,

stating that his resignation be accepted with effect from 20th April, 2007. Vide letter dated 8th March, 2007, the Company had accepted the resignation of this petitioner with effect from 12th May, 2007. This petitioner also at no point of time offered and/or actually paid salary of three months in lieu of the notice period, if there was shortfall. We are also unable to see any violation of the Rules on the part of the respondent or any element of arbitrariness on their part. Primarily, the petitioners have to blame themselves for the situation in which they have placed themselves.

12. We see no reason to interfere in the action taken by the respondent and have no hesitation in dismissing these writ petitions, while leaving the parties to bear their own costs.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.